



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1991

Mr. Charles Griffith
Deputy City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR91-583

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14061.

You have received a request for information relating to the accidental death of a child at Mabel Davis Park. Specifically, the requestor seeks:

Records, details, reports, or other documents relating to any incident which may have occurred at or near Mabel Davis Park . . . any and all information regarding incidents in which individuals may have been injured at the park, at any of the park's multiple entrances, or within 50 feet of the park.

You assert that the police report relating to the incident (Attachment B) and the maintenance record of the gate involved (Attachment C) are responsive to the request. You claim that the requested information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political

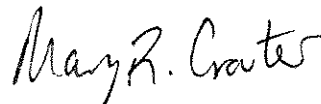
subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990) at 4. Section 3(a)(3) requires parties to a lawsuit to seek relevant information through the normal process of discovery. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You have submitted to us for review a letter you have received from the attorney representing the mother of the deceased child. In this letter, the attorney serves notice that he represents the mother "in connection with personal injuries and the wrongful death of her son." We conclude that such notification sufficiently demonstrates that litigation may be reasonably anticipated. *See generally id.* at 4-6. We further conclude that the requested information relates to the anticipated litigation. Accordingly, unless the information requested has already been disclosed through the discovery process or by court order, you may withhold the information under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the information at issue here.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-583.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lcd

Ref.: ID# 14061

cc: Ms Lynette Romero
KVUE Television
P. O. Box 9927
Austin, Texas 78766